

House Study Bill 127 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

- 1 An Act relating to possession under the criminal law.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 124.101, Code 2011, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 25A. "*Possess*" or "*possession*" means as
4 defined in section 702.13A.

5 Sec. 2. Section 124A.2, Code 2011, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 5. "*Possess*" means the same as defined in
8 section 702.13A.

9 Sec. 3. NEW SECTION. **702.13A Possession.**

10 "*Possess*" or "*possession*" means having knowledge of the
11 presence and nature of an object or substance and having either
12 actual or constructive possession of the object or substance.
13 Possession may be sole or joint. A person may be in possession
14 of an object or substance without having a proprietary interest
15 in the object or substance or a right to possess the object or
16 substance.

17 1. A person has "*actual possession*" when a person has direct
18 physical control of an object or substance on the person or
19 within reach and convenient control.

20 2. A person has "*constructive possession*" when a person is
21 not in actual possession, but has knowledge of the presence
22 and nature of an object or substance and has the power and
23 intent to exercise control over the object or substance, either
24 directly or through another person. Constructive possession
25 may be inferred, and no further proof of knowledge or intent
26 is required, when an object or substance is found in a place
27 exclusively accessible to the person. When a person does
28 not have exclusive access to the place where the object or
29 substance is found, a trier of fact may determine a person's
30 knowledge and intent from the totality of the circumstances,
31 including the person's proximity to the object or substance,
32 the person's access to the area where it is found, whether it
33 is in plain view, any incriminating statements or actions by
34 the person, whether the object or substance is found in or near
35 the person's belongings, and any other relevant circumstances.

1 In the context of possession of controlled substances, a trier
2 of fact may also consider the person's possession of drug
3 paraphernalia and evidence of recent drug use by the person and
4 any other relevant circumstances.

5

EXPLANATION

6 This bill defines the term "possess" or "possession" for
7 purposes of a criminal case to mean having knowledge of the
8 presence and nature of an object or substance and having either
9 actual or constructive possession of the object or substance.
10 Possession may be sole or joint. Under the bill, a person may
11 be in possession of an object or substance without having a
12 proprietary interest in the object or substance or a right to
13 possess the object or substance.

14 The bill defines "actual possession" to mean when a person
15 has direct physical control of an object or substance on the
16 person or within reach and convenient control of the person.

17 The bill defines "constructive possession" to mean when a
18 person is not in actual possession, but has knowledge of the
19 presence and nature of an object or substance and has the power
20 and intent to exercise control over the object or substance,
21 either directly or through another person. Constructive
22 possession may be inferred, and no further proof of knowledge
23 or intent is required, when an object or substance is found
24 in a place exclusively accessible to the person. The bill
25 provides that when a person does not have exclusive access
26 to the place where the object or substance is found, a trier
27 of fact may determine a person's knowledge and intent from
28 the totality of the circumstances, including the person's
29 proximity to the object or substance, the person's access to
30 the area where it is found, whether it is in plain view, any
31 incriminating statements or actions by the person, whether
32 the object or substance is found in or near the person's
33 belongings, and any other relevant circumstances. In the
34 context of possession of controlled substances, a trier of fact
35 may also consider the person's possession of drug paraphernalia

H.F. _____

1 and evidence of recent drug use by the person and any other
2 relevant circumstances.